



## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

#### 25 CFR Part 514

#### RIN 3141-AA77

#### Fees

**AGENCY:** National Indian Gaming Commission, Department of the Interior.

**ACTION:** Proposed Rule.

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**SUMMARY:** The National Indian Gaming Commission proposes to amend agency procedures for calculating the amount of annual fee a gaming operation owes the National Indian Gaming Commission. The proposed amendments will allow a gaming operation to exclude certain promotional credits from the calculation of Assessable Gross Gaming Revenue.

**DATES:** Written comments on this proposed rule must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email comments to:* [information@nigc.gov](mailto:information@nigc.gov)
- *Mail comments to:* National Indian Gaming Commission, 1849 C Street, NW., MS 1621, Washington, DC 20240.
- *Fax comments to:* National Indian Gaming Commission at 202-632-0045.

**FOR FURTHER INFORMATION CONTACT:** Austin Badger at (202) 632-7003 or by fax (202) 632-7066 (these numbers are not toll free).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (“NIGC” or “Commission”) and set out a comprehensive framework for the regulation of gaming on Indian lands. On August 15 1991, the NIGC published a final rule in the Federal Register called Annual Fees Payable By Class II Gaming Operations. 58 FR 5831. The rule added a new part to the Commission's regulations to provide direction and guidance to Class II gaming operations to enable them to compute and pay the annual fees as authorized by the Indian Gaming Regulatory Act. The Commission has substantively amended them numerous times, most recently in 2018 (83 FR 2903).

### **II. Development of the Rule**

On, June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the fee regulations. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendment to the fee regulations were intended to provide clarity as to whether a tribal gaming operation must include certain promotional credits, commonly referred to as “free play,” as “money wagered” for purposes of calculating assessable gross revenues. The Commission held two virtual consultation sessions in July of 2021 to receive tribal input on the possible changes.

The Commission reviewed all comments received as part of the consultation process. One comment suggested that rather than allowing a tribal gaming operation to decide whether to exclude the promotional credits, it should make the exclusion mandatory. The Commission rejected this comment for purposes of this proposed rulemaking so as to provide maximum flexibility to tribal gaming operations to decide for themselves whether to exclude the credits or

not. That being said, the Commission is especially interested in comments as to whether there would be unintended consequences if the Commission were to allow the tribal gaming operation to decide if it will deduct promotional credits.

### **III. Regulatory Matters:**

#### *Regulatory Flexibility Act*

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

#### *Small Business Regulatory Enforcement Fairness Act*

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

#### *Unfunded Mandate Reform Act*

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

#### *Takings*

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *National Environmental Policy Act*

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

#### *Paperwork Reduction Act*

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by 44 U.S.C. 3501, et seq., and assigned OMB Control Number 3141-0007.

#### *Tribal Consultation*

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC’s consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe’s formal relationship with the Commission; or the consideration of the Commission’s trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2020<sup>1</sup>, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the fee regulations.

## List of Subjects in 25 CFR Part 514

Administrative practice and procedure, Gambling, Indian, Indians-lands, Indians-tribal government, Indians-business and finance.

For the reasons discussed in the Preamble, the Commission proposes to revise its regulations at 25 CFR part 514 as follows:

### **PART 514 - FEES**

1. The authority citation for part 514 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2717, 2717a..

2. Amend § 514.4 by revising paragraph (f) and adding paragraph (g) to read as follows:

#### **§ 514.4 How does a gaming operation calculate the amount of the annual fee it owes?**

\* \* \* \* \*

(f) The amounts wagered that the gaming operation can demonstrate were issued by the gaming operation as promotional credits may be excluded from the total amount of money wagered.

(g) Unless otherwise provided by regulation, generally accepted accounting principles shall be used.

DATED: November 18, 2021, Washington, DC.

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E. Sequoyah Simermeyer  
Chairman